

PUBLIC DEFENDER COMMISSION RESOLUTION

Whereas, the 2005 Montana Legislature passed the Montana Public Defender Act, codified under Title 47 creating a statewide public defender system to deliver public defender services in all courts in the state; and

Whereas, the system is supervised by the Public Defender Commission (Commission) and administered by the Office of the State Public Defender (OPD); and

Whereas, 47-1-110, MCA, establishes a state special revenue public defender account for deposit of payments for the cost of a public defender ordered by the court pursuant to 46-8-113, MCA, as part of a sentence in a criminal case; and

Whereas, according to state and accounting rules, OPD is to account for assessments of costs by a judge as receivables and for the receipt of cash as a reduction of the receivable and as revenues; and

Whereas, in order to comply with state and accounting rules the agency needs information in sufficient detail from the courts; and

Whereas, OPD is required by 47-1-201 (10) (b), MCA, “to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid”; and

Whereas, OPD is not receiving information from the courts in the level of detail needed to perform the accounting and required reporting noted above; and

Whereas, public defender costs are assessed by individual judges in the various courts and made part of a legal sentencing that is up to the court to enforce, and therefore OPD does not have the legal authority to enforce payment of these fees; and

Whereas, OPD does not have the authority to refer its clients to the Department of Revenue (DOR) or any other collection agency to enforce collection of the court-ordered debts, which is a requirement of state agencies pursuant to the Montana Operations Manual Policy 320, Section XII; and

Whereas, OPD does not have the personnel or funds to commit toward collecting the detailed information it is not getting from 207 courts;

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC DEFENDER COMMISSION OF THE STATE OF MONTANA:

1. The Commission understands that OPD can only record cash collected in summary until a resolution is found, because the agency does not receive detailed information from the courts and therefore will be out of compliance with state and accounting policy.
2. The Commission further understands that OPD will refrain from referring any open client account to the DOR or any other collection agency due to the facts noted above.

Adopted October 18, 2013

Richard E. “Fritz” Gillespie, Chair
Montana Public Defender Commission